

Notes from the Field

My Observations of the Other Tribunal

During the last week of September 1996, I visited the International Criminal Tribunal for Rwanda (ICT-R) in Arusha, Tanzania, as it opened for business. It was a revealing experience, especially in light of my trip last May to the International Criminal Tribunal for the Former Yugoslavia (ICT-FY) at The Hague.

Before going to Tanzania, I spent two weeks in Kigali, Rwanda, where I met with several prosecutors in their offices and discussed the ICT-R proceedings. I then traveled to Arusha where I met with the Tribunal's legal advisor, the judges, and several other staff members. We discussed the physical set-up of the court, the hardships encountered by the staff, their interaction with the ICT-FY, the unique legal issues facing this Tribunal, and the impact this Tribunal will have on history.

The ICT-R has a staff of about fifty individuals, most of whom speak French. The Tribunal is located in an old building which at one time was Tanzania's parliament and which later became an International Conference Center. The Arusha Peace Accords were drafted and signed there. Though the Tribunal is in Arusha, the prosecutors currently have an office only in Kigali. The Information Officer is in a small room which he shares with another. He stores copies of all official documents and press releases on a desk in this office. Copies are made upon request. Pre-trial motions are kept by the Registrar and, to-date, none of them have been made available to the public.

There are two trial teams, each composed of a trial attorney, an assistant trial attorney, a legal assistant, and a legal advisor. Among this group are three Americans, two attorneys from the Department of Justice and one law professor, none of whom have extensive international law experience; all were asked to volunteer because they speak French. No one could explain if this was due to a court decision or was his personal decision.

The ICT-R prosecutors have not viewed court television proceedings of the ICT-FY nor are they acquainted with their counterparts at The Hague. There are no built-in cameras to record the proceedings at the ICT-R and court television will not be present at all time. There is one manually operated television camera selected from a press pool each day allowed in the courtroom.

The courtroom is set up similar to the ICT-FY with the accused sitting on a low bench rather than at a table. Headsets allow for simultaneous translation into French or English. Translation is a problem as it is difficult to find interpreters who speak Kenyan, French, and English; even when they are found, there are many words which simply do not translate adequately. There is room for about 100 spectators in the courtroom. Bullet-proof glass separates press and spectators from the accused and court personnel. There are no computers or monitors on the

attorney's or judges benches as at the ICT-FY. Spectators cannot see close-ups of witnesses' faces nor exhibits.

The Tribunal has only been functioning since October 1995 when the Registrar was appointed. The judges were not on a payroll until 19 June 1996 and were not permanently located in Tanzania until 6 September 1996. Their offices are sparse, their housing is not what they are used to, and there is no reliable electricity, telephones, or safe drinking water. There is no funding for support staff, and no library; there are no legal assistants nor any books. Significantly, there is no separate prison and disease and crime are rampant. Just getting to the Tribunal is difficult because there are no direct flights or passable roads to Arusha and no real modern infrastructure in the area. The judges do not speak a common language as three of them only speak French and the other three, only English. Half are African. The judges all wanted to stress, however, how much this court has done with so few assets in such a short time. They have already issued twenty-one indictments and have five individuals in custody. Trial dates have been set for four of the accused. Their first trial began in January 1997.

The ICT-R is targeting leaders, organizers, and inciters. Twelve of the twenty-one indictees were arrested in other countries prior to the ICT-R investigating or indicting them. The arresting countries, recognizing the Tribunal's primacy in jurisdiction, wanted to turn them over to the Tribunal either because the status of the person required attention from the ICT-R or because Rwanda has the death penalty. Most pre-trial motions are duplicates of ICT-FY motions. Witness protection is more difficult here than in the Former Yugoslavia because most witnesses are not refugees but rather still live in their villages, among the killers. For this reason, prosecutors withhold names of witnesses until shortly before trial.

All indictments so far have charged Genocide, Crimes Against Humanity, and Geneva Convention Common Article 3 and Protocol II violations. The perception amongst those I spoke to was that genocide would not be hard to prove. However, they will have to address the defenses to the element of "intent to destroy an entire group" which are "change of mind" and "I saved some so I had no intent to destroy all." This is the first time genocide is being prosecuted in an international forum, so it remains to be seen what will happen. The same is true for Common Article 3 violations. Common Article 3 violations are those war crimes that occur during internal armed conflict and which had previously been left for national courts to try. Common Article 3 violations concern the basic right to be treated humanely. Many of the Common Article 3 violations are the same as we see in the named grave breach categories.

One of the most interesting developments in this area is the expanded application of the command responsibility concept. The Tribunal adopted language similar to our definition of command responsibility; however instead of holding commanders

responsible, it holds "superiors" responsible. This is a substantial expansion of customary law. Rwanda's culture of obedience to commune and prefecture leaders magnified the serious abuses incited by civilian leaders. These leaders, such as mayors of various villages, are being prosecuted under the "superior" responsibility concept.

I was present on the Tribunal's first day of business at a hearing requested by defense counsel for Georges Anderson Nderubumwe Rutaganda. He was seeking the names and identification of witnesses. He also requested a delay of the October trial due to his client's poor health and asked that the ICT-R pay for transfer of his client to a Belgian hospital for better treatment. The prosecutors asked for protection for the victims and witnesses. The Tribunal ordered that protection be provided to the witnesses and that their names be given to the defense no earlier than three months prior to trial. The trial was delayed until March 1997 and the request for hospital transfer was denied. Many believe the accused may not live until his trial.

The next day, I attended a hearing in the Jean-Paul Akayesa case, scheduled to immediately proceed to trial. The defense made a motion for the names and witness identification of prosecution witnesses and asked that the trial be delayed. The Tribunal ordered the release of the names and witness identification to the defense counsel and the trial was delayed until 31 October 1996. Both cases required *in camera* hearings to discuss witness protection issues and all spectators were removed from the courtroom at those times.

Everyone I spoke to had great hopes for substantial support and increased interest in the Tribunal. The new Chief Prosecutor, Judge Louise Arbor, has already visited the Tribunal and the Prosecutors Office and she is aware of the funding and staff support issues.

I was impressed by the dedication of those I met and their belief in the Tribunal. They stated that its creation makes it clear that Africa is important and actions there must be handled humanely. The Tribunal will hold individuals responsible for their behavior and thus help change the inculcated blind obedience responsible for so much of the bloodshed. They believe justice will bring peace. Finally, it is hoped the work of this Tribunal will lay the groundwork for the establishment of a permanent criminal court where the common people will have access to relief.

I registered my frustration with all the parties I spoke with concerning the difficulty in obtaining information or documents from the ICT-R. On 30 October 1996, the *Washington Post* carried an article announcing that United Nations officials are investigating charges of administrative irregularities and improper treatment of staff members at the ICT-R and on 2 February 1997, it announced that the Registrar and the Deputy Prosecutor for Rwanda had resigned due to the findings of the Investigation. These are the very persons I was repeatedly told were hampering the flow of paper and information outside of Rwanda. Hopefully, these changes will improve communications with the ICT-R.

This trip to the ICT-R was an eye-opener. It was so different from the proceedings and surroundings of the Hague that I came away cheering for their success because they are the "international underdog." Without the interest of the international community however, the Tribunal is destined to have a limited impact on international law while actually dealing with more precedent setting issues. Major Marsha Mills, Professor of Law, International and Operational Law Department, The Judge Advocate General's School, United States Army, Charlottesville, Virginia.